IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO. 4654 of 2005

Shri. Bhimrao Pandit Biraidar
and Ors. ... Petitioners

Versus

The State of Maharasthra and Ors. Respondents

Mr. Y.S. Jahagirdar, Sr. Advocate with Mr. G.S. Godbole for Petitioner.

Mr. P.M. Patil, A.G.P . for Respondent Nos. 1 to 5.

Mr. S.M. Sabrad for Applicant in C.A. No. 1997 of 2005.

WITH

CIVIL APPLICATION NO. 1997 OF 2005

Shri. Chandbasappa Gursidappa
Mashale ... Applicant

Versus

Shri. Bhimrao Pandit Biraidar and Ors..Respondents

Mr. S.M. Sabrad for Applicant.

Mr. G.S. Godbole for Respondent Nos. 1 to 9.

CORAM : F.I. REBELLO &
DR. D.Y. CHANDRACHUD,JJ.
DATED : 20TH SEPTEMBER, 2005

P.C.

. Rule. Heard forthwith.

2. The Petitioners were members of the A.P.M.C. Solapur. The first meeting of the Managing Committee of Respondent No. 6, A.P.M.C. was held

on 15.3.2000. Section 15 of the Maharashtra Agricultural Produce Marketing Regulation Act, 1963 sets out the terms of the office. In the normal course, term of the committee would have expired on 14.3.2005. On 10.1.2005 the respondent No. 4 informed the chairman of A.P.M.C. Solapur to forward list of voters under the traders constituency and in the Hamal/Weighman Constituency to the SDO Solapur who is respondent No. 5. By communication of 25.1.2005 the S.D.O. Solapur was pleased to send letter to A.P.M.C. Solapur to forward the list of voters of traders constituency and Hamal/Weighman constituency. On 21.2.2005 the Petitioner NO. 1 in his capacity as Chairman of the A.P.M.C. Solapur forwarded list of traders constituency and Hamal/Weighman Constituency to the S.D.O. Solapur as also Assistant Registrar. The District Deputy Registrar by his communication of 11.5.2005 informed the Petitioner No. 1 in his capacity as Chairman of A.P.M.C. Solapur that the revised list of voters as on 14.9.2004 should be forwarded to S.D.O. Solapur. The same was done by communication dated 11.5.2005. On 17.5.2005 Respondent No. 5 sent letter to A.P.M.C. Solapur and to District Deputy Registrar, Solapur for publishing provisional list of voters. The programme as required under Rule 36 was duly

published on notice Board of A.P.M.C. Solapur and District Deputy Registrar, Solapur which was signed by the S.D.O. Solapur Division. As on 17.6.2005 15 objections were received. District Deputy Registrar, Solapur informed A.P.M.C. to forward its remark on or before 2.7.2005 and final hearing on 8.7.2005 by communication of 27.6.2005. The hearing took place and was completed on 8.7.2005 by the District Deputy Registrar, Solapur. It is the case of the Petitioners that on 12.7.20056 without issuing any show cause to the Petitioners, or other members of the A.P.M.C. Solapur and without affording any opportunity of hearing, Respondent No. 3 i.e. Divisional Joint Registrar passed an order which is impugned before this court and appointed Respondent No. 4 as the Administrator.

3. At the hearing of this Petition, on behalf of Petitioners, their learned counsel has principally contended that the order appointing Administrator and consequent removal of the Petitioners involves civil consequences. They ought to have been heard. Apart from that it is pointed out that under the proviso to Section 14(3) of the Act, the State Government could have extended the term of office of the Committee as the General Elections to the committee could not be held for the reasons beyond

the control of the committee. In the instant case, it is pointed out that the committee had taken all steps to complete the voter's list and consequently the respondents were bound to extend the term of office of the Petitioners herein. It is next contended that the impugned order is also violative of Article 14. The tenure of four of the APMCs of Solapur District i.e. A.P.M.C. Mohol, A.P.M.C. Mangalvedha, A.P.M.C. Aklooli and A.P.M.C. Sangola have also come to an end. It is submitted that this fortifies the contention of the Petitioner that the impugned order is passed only with a view to please the political masters. The learned counsel points out that in the case where there was discretion in the authority and the authority has refused to exercise discretion for the reasons which are apparently illegal or extraneous, it will be open to this court by writ of mandamus to issue appropriate directions. For that purpose reliance is placed in the judgement of the Comptroller and Auditor General of India, Gian Prakash, New Delhi and another Versus K.S. Jasgannathan and another AIR 1987 Supreme Court 537.

. On behalf of the State Authorities, affidavit has been filed by one Basavraj Yempalle, the

District Deputy Registrar, Cooperative Societies, Solapur. In Para 7 it is set out that the Managing Committee of the Respondent No. 6 has not taken any efforts for extension of tenure after 14.3.2005 and they have not submitted any application for the same to the Competent Authorities under Section 14 of Agriculture Produce Market (Regulation) Act, 1963. Apart from that it is pointed out that the Director of Agricultural Marketing, Pune has conducted inquiry of the A.P.M.C. Solapur and they have observed gross irregularities in the working of the A.P.M.C. Solapur. As such even if the A.P.M.C. Solapur had asked for extension for term, the proposal for extension would have to be rejected. It is pointed out that the Government has not extended the period of Managing Committee of A.P.M.C. Solapur who ceased to hold and had to vacate their offices as members of the Managing Committee under Section 15-A of Agricultural Produce Market (Regulation) Act. It is also pointed out that the Petitioners have remedy by way of appeal and for all the reasons aforesaid petition ought to be rejected.

. Shri. Chandbasappa Gursidappa Mashale who had intervened has filed affidavit in which it is pointed out that for exercise of power under

Section 14 of the Act, an application had to be made. No such application is made by the Petitioner nor is there a resolution passed by the Managing Committee for granting such extension. It is also pointed out that against various acts of the Petitioners and other members of the Managing Committee, several complaints/representations were made to the Respondent authorities. Dealing with the contention of the Petitioner that no action whatsoever has been taken against the 4 other Market Committee, it is submitted that after expiry of their terms, the members of the Managing Committee in fact had made an application for extending their tenure.

. It may also be mentioned that in the meantime, the State Government has issued notification postponing the elections of the A.P.M.C.s upto 30.09.2005. Considering the above, we may now consider the contentions as urged on behalf of the Petitioners herein.

5. Section 14(3) of the Act provides that the Members of the Market Committee shall hold the office for a period of five years. Under Section 15 the term of office of members of the market committee shall be deemed to commence on the date

of the first meeting of the market committee at which the business is transacted. Section 15(A) starts with the clause namely "Notwithstanding anything contained in sub section (3) of Section 15 or any other provisions of this Act, where the term of office of two years, five years, or as the case may be, the extended term of office, if any, under the proviso to sub section (3) of section 14 of the members of any Market committee has expired,the Director or any officer not below the rank of the District Deputy Registrar of Cooperative Societies, authorised by him shall, by order in writing that

:-

(a) all members of the Committee shall, as from the date specified in the order, cease to hold and vacate their offices as members or otherwise; and

(b) the person appointed by the Director or such authorised officer, from time to time, shall be the Administrator to manage the affairs of the Committee, during the period from the date specified in the order upto the day on which the first meeting of the reconstituted Committee after the election is held, where there is a quorum (hereinafter in this section referred to as "the said period"). Such election shall be held within

a period of six months from the date the Administrator assumes office.

. There is power in the Government by virtue of Section 14(3) to extend the term of the committee by a period of six months in exceptional circumstances so as not to exceed one year in the aggregate. The State Government in a case where the general election of members of a Committee could not be held for reasons beyond the control of the Committee before expiry of the term of office, to extend the term of office. In other words in a case where elections could not be held where for reasons as beyond the control of the committee then only there is power in the State Government to extend the term of the office. In the instant case, there is nothing on record to indicate and or to show that the reasons for not holding elections was for any reasons attributed to the committee. The State Government, it appears did not exercise power conferred upon it by the proviso, as can be seen from the affidavit filed on behalf of the State Government. The reasons which however, have been given by the State Government are that the committee did not apply for extension. A reading of the proviso does not indicate that the committee has to apply. The power can be exercised even

without application by the committee. The first reason therefore, given as to why discretion was not exercised as committee did not apply for extension, really speaking is no reason for failure to exercise discretion.

. The Respondent State however, in the affidavit has also pointed out that an enquiry was ordered into the functioning of the committee and gross irregularities have been found out. The learned A.G.P. was asked as to when the report was submitted. The learned A.G.P. points out that the report has not yet been submitted but the enquiry officer has found irregularities. While exercising the discretion it could have been open to the State Government to consider the report, if any. It also cannot be said that merely because there is report or enquiry the Government is barred from exercise of discretion. That would depend on the facts of each case. In the instant case, even if, we hold that the action of the respondent State in not exercising the discretion is based on no reasons, the effect would be to send the matter back to the State Government for exercising its discretion.

6. On behalf of the Petitioner, it was also contended that there are other committees whose

term was extended by the exercise of discretion as conferred under proviso to Section 14. Those committees are not before us. Apart from that there is no sufficient material placed to indicate the circumstances in which discretion was exercised. The intervener in his affidavit has set out that the other committees had sought for extension and then Managing Committee had also passed resolution asking for extension. We do not propose to go into those aspects of the matter considering that there is sufficient material before us to hold on basis of which the State Government exercised discretion in favour of the other committees. Those committees are also not before us.

7. The question however, is whether the administrator should be allowed to continue. In the instant case, we find that the process of holding election had commenced as far back as 10.01.2005 and in fact the provisional voter's list was published, objections were invited and the objections had been heard on 8.7.2005. All that is required is therefore, to finalise the voter's list. In the meantime, the State Government also issued notification postponing the elections upto 30.09.2005.

. In the instant case, an Administrator was appointed not because the respondent state or authorities had found any illegality on the part of A.P.M.C. but because their term had come to an end. The fact that thereafter enquiry was conducted and or is in progress would make no difference in so far as initial appointment of the administrator is concerned. The fact is that the Administrator was appointed on 12.7.2005 and in the ordinary course, the term should not extend beyond the period of six months which term can be extended in extra ordinary circumstances. We find as on the facts of the present case, instead of sending the matter back to Government, for reconsideration, for the exercise of discretion, the ends of justice would meet if the respondents are directed to hold elections to the A.P.M.C. as expeditiously as possible. The term of the Committee having come to an end, a direction to hold election would be a proper direction.

8. Considering the above, the following order :

. Respondent No. 5 counting from 1st October, 2005 to finalise the voter's list before 30.10.2005.

. The Collector/S.D.O. thereafter to commence election process in terms of Rule 43 of the Rules framed under the Act and complete the election process not latter than 31.12.2005.

. Rule made absolute accordingly. No order as to costs.

. Civil Application No. 1997 of 2005 accordingly disposed of.

(F.I. REBELLO,J.)

(DR. D.Y. CHANDRACHUD,J.)